IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 279 OF 2005

Sanjay Shivaji Pathak ...Petitioner

Versus

The Cosmos Co-operative Bank Ltd. Pune and Ors. ...Respondents

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Mr. R.K. Saroj, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 31ST JANUARY, 2005

P.C.:-

1. Heard Mr. Saroj, the learned counsel for the petitioner.

2. The petitioner was a guarantor to the loan obtained by the respondent No.2 i.e. Anil Madhav Mohite from the respondent No.1 Bank. Similarly the present respondent No.3 is also a guarantor alongwith the petitioner. The borrower became defaulter and therefore, initially the recovery proceeding were initiated under Section 101 of the Maharashtra Co-operative Societies Act. However, as the respondent No.1 Bank came to be covered under the Multi State Co-operative Societies Act, 2002, the said proceedings were withdrawn. The withdrawal was

allowed with liberty to institute appropriate proceeding for recovery and accordingly the Bank filed the recovery proceedings before the Arbitrator under Section 84 of the Multi State Co-operative Societies Act, 2002. The said application has been allowed by the impugned judgment dated 3.11.2004.

3. The learned counsel for the petitioner at the threshold submitted that the application was hit under the provisions of section 126(6) of the Multi State Co-operative Societies Act, 2002. His submission is devoid of merits, as admittedly no proceedings were pending when the application is filed and all other objections raised including the delay have also been dealt with by the Arbitrator. In addition, the petitioner also had questioned choice of the Bank for recovery against the guarantors. The tribunal noted that in the guarantee signed by the petitioner the benefit available under Section 141 of the Contract Act was given up.

4. It is also alleged that the respondent Bank in collusion did not furnish the correct address of the borrower and the proceedings before the Arbitrator went ex-parte. This contention is also ill-founded. The Arbitrator has noted that on the promissory note the address of the borrower was noted and a fresh notice was directed to be issued on the said address.

The notice was returned with a remark "left address". Under these circumstances, the respondent No.1 came to be proceeded ex-parte in view of section 3 of the Arbitration and Conciliation Act, 1996 and the decision rendered in the case of **M/s. Madan and Co. Vs. Wazir Jaivir Chand (A.I.R. 1989 SC 630).** By filing application under Section 16 of the Arbitration and Conciliation Act, 1996 the jurisdiction of the Arbitrator was challenged, the Arbitrator observed that the dispute regarding the recovery was covered by section 84 of the Multi State Co-operative Societies Act, 2002 and not proceedings were pending as contemplated under Section 126(6) of the said Act the issue of lack of jurisdiction as raised was devoid of merits. On merits it was contended by the petitioner that his signatures were taken on the documents by misrepresentation and that he had never offered his guarantee to the subject loan transaction. He alleged that the Bank was in collusion with the borrower and when the loan was secured by hypothecation of the machinery, the Bank could have recovered the amount against the hypothecated property. This allegation was also found to be frivolous and without any support on record.

5. On all counts, the challenge raised by the petitioner in the arbitration proceeding was

considered and the reasoning given by the Arbitrator in the impugned decision does not suffer from any error apparent on the face of the record, hence, there is no case made out to call for interference under Article 227 of the Constitution.

6. The learned counsel for the petitioner has finally relied upon a decision of the Supreme Court in the case of **Pawan Kumar Jain Vs. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Ors. reported in 2004 AIOL Com. 434.** The said case is not applicable to the facts of the present case. Hence, the petition is rejected summarily.